

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

Claim 1 has been amended to specify an oil level of about 65 % to about 81 %. Support for this amendment may be found in original claim 23 which has been canceled along with claim 24, without prejudice. Claim 1 has been further amended to incorporate the preferred throughput rate of Claim 14 which has been canceled, without prejudice. Support for this amendment may be found at page 7 of the Specification, which further states, by way of comparison, than conventional processes for making mayonnaise using mills cannot operate at such high throughput rates, with colloid mills only going up as high as about 250 pounds per minute.

These claim amendments are being made in order to narrow the issues and place the application in better form for appeal (in the event no claim is allowed), and therefore entry and allowance of the amended claims is respectfully requested.

Claims 1, 3, 5, 6, 8, 9-11, 13-16, 18-26 and 28 Are Not Obvious Under 35 USC §103

Claims 1, 3, 5, 6, 8, 9-11, 13-16, 18-26 and 28 were rejected under 35 USC §103 as being unpatentable over Trainor, U.S. Patent No. 4,423,084 (hereinafter, Trainor '084) in view of Ross, U.S. Patent No. 5,632,596 (hereinafter, Ross '596). According to the Office Action, in summary, Trainor '084 discloses a process for making a salad dressing having starch, acidulant, egg, oil, water and sweetener. Admittedly, the '084 reference is silent with respect to (1) *pre-mixing raw ingredients that include oil and emulsifier* and (2) rotor and stator measurements, but the specific apparatus features described in Ross '596 are relied upon to cure the vast deficiencies of the primary reference. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention is directed to a process for making an *emulsified* dressing composition, the dressing composition being a mayonnaise or salad dressing. *The process as claimed in Claim 1 includes a step (a) of forming a coarse pre-emulsion by combining an oil phase, an aqueous phase, and an emulsifier phase in a pre-mix tank.* The coarse oil/water emulsion is then sent through the in-line mixer/emulsifier in a single pass to produce the desired dressing composition. Claim 1, as amended, specifies a high *throughput rate of about 500 to about 750 pounds per minute (not achievable in colloid mills, such as those of Trainor '084).* Further, independent claim 1, is directed to a process for making a mayonnaise and/or salad dressing composition in the same production line such that a coarse emulsion is sent through an apparatus in a single pass. Only one production line is required in order to make two distinct dressing compositions.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, various and unobvious process modifications which include axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor,

the characteristics of the rings of the teeth of the stator and rotor, and the presence of radial channels on the stator and rotor. The process of claim 1 (*already requiring an oil phase and an aqueous phase*) is still further defined in that the raw ingredients can comprise an egg phase (claim 25), a starch paste phase, a sweetener phase, an acidulant phase, optional solids, or combinations thereof. Claims 25-26 define the type of *emulsifier and amounts employed*. Claim 22 describes a dressing composition made by the process of claim 1. Dependent claim 28 further defines the process of claim 1 such that the mayonnaise and salad dressing produced *in the same production line* are firm to creamy and made with less oil and less emulsifying components when compared to compositions made via conventional processes. Specifically, the process set forth in the claimed invention results in a mayonnaise or salad dressing composition that is firm to creamy in the absence of high levels of oil and emulsifying agents. Thus, good textures are achieved while reducing the amount of oil and/or emulsifying components when compared to conventional processes. Such good textures are also achieved without utilizing starch.

In contrast, Trainor '084 merely describes a process for making emulsified salad dressings, *using a **colloid mill as critical** in the freeze-thaw stability and resistance to mechanical stress*, with starch but in the absence of freeze-resistance starch. The '084 reference does not teach, suggest, or disclose, for example, the steps of forming a *premix of raw ingredients which include an oil phase and an emulsifier phase* to make a coarse emulsion to be fed in a single pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement as claimed. Moreover, Trainor '084 requires a smaller oil amount (*in contrast to present claim 1 as amended*). *Furthermore, Trainor '084 fails to disclose or suggest texture characteristics as set forth in the presently claimed invention. Moreover, Trainor '084 cannot achieve the high throuput rates with it colloid mill, in contrast to the present invention as claimed.*

The Final Office Action states that the argument regarding Trainor not disclosing the steps of forming a premix of raw ingredients that include oil and emulsifier are not found

persuasive "since the claims do not require this step." Applicants respectfully submit that the claims do require this step. Element (a) of claim 1 is directed to:

combining raw ingredients comprising an oil phase and an aqueous phase in a pre-mix tank comprising a means for mixing to form a coarse emulsion ...

Claim 1 has a further limitation that states:

... the dressing being mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

Therefore, Applicants respectfully submit that Trainor does not disclose the claimed significant steps of forming a premix of raw ingredients that include oil and emulsifier.

Ross '596 fails to cure the vast deficiencies of Trainor '084, since the '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The combination of references does not, even remotely, suggest blending mayonnaise and/or salad dressing compositions in one pass and in the same production line. Furthermore, the combination of references does not, even remotely, suggest that a firm to creamy mayonnaise composition and/or salad dressing composition can be made with a creamy to firm texture while at the same time having less oil and/or emulsifier than conventional products (even in the absence of starch).

Claim 29 Is Not Obvious over Akashe '336 In View of Ross '596

Claim 29 is directed to a starch free mayonnaise and salad dressing.

Claim 29 was rejected under 35 USC §103 as being unpatentable over Akashe, U.S. Patent No. 6,235,336 (hereinafter, Akashe '336) in view of Ross, U.S. Patent No. 5,632,596 (hereinafter, Ross '596). According to the Office Action, Akashe '336 disclose using salted egg yolks to make an emulsion in a device with a rotor/stator shear device; The ingredients of the product are shown in the first Table in column 6. The Office Action admits that the claims differ

from Akashe '336 in the specific apparatus features of the shear device; and relies on Ross to cure deficiencies.

Applicants respectfully traverse. *Nothing in the combination of Akashe '336 with Ross '596 teaches or suggests arriving at a starch free mayonnaise.* Akashe '336 merely relate to one possible ingredient in a dressing composition, i.e., egg yolk. The present invention does not even call for the *modified* egg yolk of Akashe '336 and Applicants question its relevance to the present invention. Ross '596 fails to cure the deficiencies of Akashe '336 in order to arrive at the subject matter of the present invention. Akashe '336 is not aimed at forming a starch-free dressing. Furthermore, there is no suggestion in Akashe '336 for combination with Ross '596, *nor does that combination arrive at a starch free mayonnaise.* Reconsideration of this rejection is respectfully requested.

There Is No Motivation to Combine the References

The Office Action has combined Akashe '336 with Ross '596 and has concluded that the claimed invention is obvious. Even if it was not clear prior to the present Amendment, it is now clear that there is no motivation to combine the references. Some teaching, suggestion, or incentive supporting combination of multiple references must be shown in order to prove obviousness. In re Gaiger, 815 F.2d 686 (Fed. Cir. 1987); ACS Hospital Systems, Inc. v. Montefiore Hospital, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

An obviousness rejection is proper only when "the subject matter as a whole would have been obvious at the time the invention was made ..." (emphasis added). 35 U.S.C. 103. Applicants respectfully submit that the Office Action has improperly chosen certain aspects of Akashe '336 and combined them with aspects of Ross '596, without showing where the motivation is to combine them to come up with the subject matter of the present invention as a whole, within the meaning of 35 U.S.C. 103. Applicants submit that the pending claims are not obvious over the cited references, under 35 U.S.C. 103, especially in view of the present Amendment. Reconsideration and withdrawal of the rejection is respectfully requested.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. In view of this, and since all claim limitations set forth in the presently claimed invention as now presented are not even remotely found in the combination of references relied on by the Examiner, it is respectfully requested that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants further submit that they welcome any suggestions by the Examiner so that the present application can be passed to issue and so that Applicants may further business objectives.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,
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